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<AGENCY TYPE='S'>DEPARTMENT OF AGRICULTURE

<SUBAGY>Agricultural Marketing Service

<CFR>7 CFR Part 948

<DEPDOC>[Doc. No. AMS-FV-12-0044; FV12-948-2 PR]

<SUBJECT>Irish Potatoes Grown in Colorado; Reestablishment
of Membership on the Colorado Potato Administrative
Committee, Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on reestablishing the membership on the Colorado Potato Administrative Committee, Area No. 2 (Committee). The Committee locally administers the marketing order regulating the handling of Irish potatoes grown in Colorado. This rule would modify the Committee membership structure by amending the position allocated to a producer from Conejos County. Beginning with the 2013-2014 term of office, such designated Committee position would be allocated to an eligible producer operating in either Conejos or Costilla County. This action is expected to improve Committee representation for producers from this sub-region of the production area.

DATES: Comments must be received by April 12, 2013.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in

connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on reestablishing the membership structure of the Committee. This rule would modify the current Committee membership structure by amending the position currently allocated to a producer from Conejos County. Beginning with the 2013-2014 term of office, such designated Committee position would be allocated to an eligible producer operating in either Conejos or Costilla County. This action is expected to improve Committee representation for producers from this sub-region of the production area. This change was unanimously recommended by the Committee at a meeting held on July 19, 2012.

Section 948.4 of the order divides the State of Colorado into three areas of regulation for marketing order purposes. These areas include: Area No. 1, commonly known as the Western Slope; Area No. 2, commonly known as San Luis Valley; and, Area No. 3, which consists of the remaining producing areas within the State of Colorado not included in the definition of Area No. 1 or Area No. 2. Currently, the order only regulates the handling of potatoes produced in Area No. 2 and Area No. 3. Regulation for Area No. 1 has been suspended.

Section 948.50 of the order establishes committees as administrative agencies for each of the areas set forth under § 948.4. The reestablishment of areas, subdivisions of areas, the distribution of representation among the subdivision of areas, or among marketing organizations within the areas is authorized under § 948.53. Such reestablishment is made by the Secretary upon the recommendation of the affected area committee. In recommending any such changes, the area committee shall consider, among other things, the relative production and the geographic locations of producing sections as they would affect the efficiency of administration of the order.

Section 948.150(a) of the order's administrative rules prescribes the Area No. 2 Committee membership, as reestablished under previous rulemaking actions, with nine producer members and five handler members. The nine producer positions are designated to represent various sub-regions of the production area. Currently, § 948.150(a)(3) specifically dedicates one of those producer positions to a producer from Conejos County.

At its meeting on July 19, 2012, the Committee unanimously recommended modifying the Committee membership structure by amending the position allocated to a producer from Conejos County. The Committee acknowledged that the position has been increasingly hard to fill as the number of potato producers located in Conejos County eligible to serve on the Committee has declined. The Committee attributed the decrease in the number of producers to a number of issues in that area, including competition from alternative crops and industry consolidation.

The Committee believes that allocating the position specified in § 948.150(a)(3) to a producer from either Conejos or Costilla County, instead of just from Conejos County, would increase the pool of potential Committee participants from that general sub-region of the production

area. Conejos County and Costilla County adjoin each other on the southern boundary of the production area and share similar climates, soils, production resources, and marketing opportunities. Producers from either of the two counties would be able to adequately represent this sub-region of the production area on the Committee. Producers from Costilla County are currently able to serve on the Committee in the position allocated in § 948.150(a)(5). This position is designated to a producer from all other counties in the Area No. 2 production area that do not have specified representation as provided in § 948.150(a)(1) through (4). This change is expected to increase the pool of potential participants eligible to serve on the Committee and to improve representation for producers from both Conejos and Costilla Counties. This proposed action was unanimously recommended by the full Committee.

<HD1>Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 80 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 180 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2010-2011 marketing year, the most recent full marketing year for which statistics are available, 15,583,512 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of \$12.75 per hundredweight, the Committee estimates that 71 Area No. 2 handlers, or about 89 percent, had annual receipts of less than \$7,000,000. In view of the

foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Colorado fall potatoes for 2010-2011 was \$9.37 per hundredweight. The average annual fresh potato revenue for each of the 180 Colorado Area No. 2 potato producers is therefore calculated to be approximately \$811,208. Consequently, on average, many of the Area No. 2 Colorado potato producers may not be classified as small entities.

This rule would reestablish the Area No. 2 Committee membership structure currently prescribed under § 948.150(a) of the order by amending the position allocated to a producer from Conejos County (§ 948.150(a)(3)). Beginning with the 2013-2014 term of office, such designated Committee position would be allocated to an eligible producer operating in either Conejos or Costilla County. Authority for this action is contained in §§ 948.50 and 948.53.

At the meeting, the Committee discussed the potential impact of this change on handlers and producers. The proposed change is expected to improve Committee

representation for producers from this general sub-region of the production area. Further, the proposed modification is not anticipated to have any financial or regulatory impact on the area's potato producers or handlers. Lastly, the benefits resulting from this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to this proposed change including taking no immediate action, reviewing the issue in the future, and redesignating the Committee position to be an at-large position that could be filled by producers from across the entire production area.

The Committee believes that representation on the Committee by producers from each of the sub-regions of the production area is important for the efficient administration of the order. The Committee also feels that the declining trend in the number of producers in Conejos County is not likely to be self-reversing. As such, the Committee determined that there would not be any benefit to delaying corrective action to resolve this Committee representation issue and readdressing it in the future. In addition, the Committee determined that changing the position designated to a producer from Conejos County into

an at-large position could jeopardize the representation for producers from that southern sub-region. As such, the Committee concluded that both of the above options would not be sufficiently responsive to the current situation and modifying the membership structure as recommended is the best course of action to take at this time.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-government Act, to promote the use of the Internet and other information technologies to provide increased opportunities

for citizen access to Government information and services, and for other purposes. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the July 19, 2012, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:
www.ams.usda.gov/MarketingOrdersSmallBusinessGuide. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **<ET='02'>FOR FURTHER INFORMATION CONTACT</E>** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All

written comments timely received will be considered before a final determination is made on this matter.

<LSTSUB><HED>List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.</LSTSUB>

For the reasons set forth in the preamble, 7 CFR part 948 is proposed to be amended as follows:

<PART><HED>PART 948 - IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

<AUTH><HED>Authority: <P>7 U.S.C. 601-674.

2. In § 948.150, paragraph (a)(3) is revised to read as follows:

§ 948.150 Reestablishment of committee membership.

* * * * *

(a) * * *

(3) One (1) producer from either Conejos or Costilla County.

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<SIG><DATED>Dated: February 5, 2013.

<NAME>David R. Shipman,
<TITLE>Administrator,

Agricultural Marketing Service.</SIG>

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